

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LEEBRO MANAGEMENT, INC. d/b/a
SAMSON BUICK, INC.

and

Case 6--CA--17106

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW)

DECISION AND ORDER

Upon a charge filed by the Union 10 February 1984, the General Counsel of the National Labor Relations Board issued a complaint 23 February 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 9 December 1983, following a Board election in Case 6--RC--9401, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB 343 (Nov. 9, 1982).) The complaint further alleges that since 8 February 1984 the Company has refused to bargain with the Union. On 29 February 1984 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 5 March 1984 the General Counsel filed a Motion for Summary Judgment. On 7 March 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

that were or could have been litigated in a prior representation proceeding. alleging a violation of Section 8(a)(5) is not entitled to relitigate issues unavailable evidence or special circumstances, a respondent in a proceeding

It is well settled that in the absence of newly discovered and previously
tive 9 December 1983.

1983 election and was certified as the unit employees' bargaining representa-
Board denied the Company's request for review. The Union won the 30 November
collective-bargaining agreement barred the petition. On 28 November 1983 the
primarily contended that the petition was untimely filed and that the existing
a request for review of the Acting Regional Director's decision. The Company
did not bar the petition. On 7 November 1983 the Company filed with the Board
between the Company's predecessor and the Associated Trades and Crafts Union
and Direction of Election, finding that a collective-bargaining agreement
On 25 October 1983 the Acting Regional Director for Region 6 issued a Decision
9401, discloses that the Union filed a representation petition 31 August 1983.
Our review of the record herein, including the record in Case 6--RC--

agree with the General Counsel.
evidence, and that there are no issues of fact or law requiring a hearing. We
does not contend that it has any newly discovered or previously unavailable
which it raised or could have raised in Case 6--RC--9401, that the Company
The General Counsel argues that the Company is attempting to relitigate issues
with the Act, the Board's Rules and Regulations, or Board and court precedent.
Union's certification, contending that the certification was not in accordance
In its answer to the complaint, the Company contests the validity of the

Ruling on Motion for Summary Judgment

proceeding to a three-member panel.

The National Labor Relations Board has delegated its authority in this

See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Pennsylvania corporation, is engaged in the retail sale and servicing of automobiles at its facility in Pittsburgh, Pennsylvania, where it annually derives gross revenues in excess of \$500,000 and purchases and receives goods and materials valued in excess of \$5,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Act.

within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. By refusing on and after 8 February 1984 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company has engaged in unfair labor practices affecting commerce

Conclusions of Law

(1) of the Act.

stitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and since 8 February 1984 the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and Since 7 February 1984 the Union has requested the Company to bargain, and

B. Refusal to Bargain

the Act.

The Union continues to be the exclusive representative under Section 9(a) of visors as defined in the Act.

All service department employees, including new car prep mechanics, new car checkers, used car lot and clean up employees, used car and customer air conditioner employees, used car conditioners, car jockeys, clean up and janitorial employees, customer service write up employees, mechanic helpers, driver parts counterpersons, mechanics, polishers, rustproofers, body mechanics, mechanic apprentices, lubricators and technician trainees, employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding office clerical employees, salespersons and guards, professional employees and supervisors as defined in the Act.

in the following appropriate unit:

9 December 1983 as the collective-bargaining representative of the employees

Following the election held 30 November 1983 the Union was certified

A. The Certification

II. Alleged Unfair Labor Practices

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if any understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Leebro Management, Inc. d/b/a Samson Buick, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of

If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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(b) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

All service department employees, including new car prep mechanics, new car checkers, used car lot and clean up employees, used car and customer air conditioner employees, used car conditioners, car jockeys, clean up and janitorial employees, customer service write up employees, mechanic helpers, driver parts counterpersons, mechanics, polishers, rustproofers, body mechanics, mechanic apprentices, lubricators and technician trainees, employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding office clerical employees, salespersons and guards, professional employees and supervisors as defined in the Act.

signed agreement:

employment and, if an understanding is reached, embody the understanding in a

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

23 July 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All service department employees, including new car prep mechanics, new car checkers, used car lot and clean up employees, used car and customer air conditioner employees, used car conditioners, car jockeys, clean up and janitorial employees, customer service write up employees, mechanic helpers, driver parts counterpersons, mechanics, polishers, rustproofers, body mechanics, mechanic apprentices, lubricators and technician trainees, employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding office clerical employees, salespersons and guards, professional employees and supervisors as defined in the Act.

LEEBRO MANAGEMENT, INC.
d/b/a SAMSON BUICK, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1501 William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 412--644--2969.